

105TH CONGRESS  
1ST SESSION

# H. R. 2497

To amend title XVIII of the Social Security Act to clarify the right of Medicare beneficiaries to enter into private contracts with physicians and other health care professionals for the provision of health services for which no payment is sought under the Medicare program.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 1997

Mr. ARCHER (for himself, Mr. THOMAS, Mr. GINGRICH, Mr. ARMEY, Mr. DELAY, Mr. BOEHNER, Mr. LIVINGSTON, Mr. HYDE, Mr. STUMP, Mr. COMBEST, Mr. TALENT, Mr. CRANE, Mr. NORWOOD, Mr. GANSKE, Mr. LINDER, Mr. PAUL, Mr. COOKSEY, Mr. COBURN, Mr. SHAW, Mr. MCCRERY, Mr. RAMSTAD, Mrs. JOHNSON of Connecticut, Mr. COLLINS, Mr. CAMP, Mr. SAM JOHNSON of Texas, Mr. ENSIGN, Mr. HAYWORTH, Mr. WELLER, Mr. ISTOOK, Mr. ROHRABACHER, Mr. DAN SCHAEFER of Colorado, Mr. BARTON of Texas, Mr. BONILLA, Mr. BOB SCHAEFER of Colorado, Mr. DOOLITTLE, Mr. MILLER of Florida, Mr. SMITH of Michigan, Mr. HASTINGS of Washington, Mr. MANZULLO, Mrs. CUBIN, Mr. HOEKSTRA, Mr. UPTON, Mr. HOSTETTLER, Mr. KNOLLENBERG, Mr. STEARNS, Mr. DICKEY, Mr. THORNBERRY, Mr. SESSIONS, Mr. CANNON, Ms. GRANGER, Mr. BRADY, Mr. HILL, and Mr. SALMON) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title XVIII of the Social Security Act to clarify the right of Medicare beneficiaries to enter into private contracts with physicians and other health care professionals for the provision of health services for which no payment is sought under the Medicare program.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Medicare Beneficiary  
5       Freedom To Contract Act of 1997”.

6       **SEC. 2. USE OF PRIVATE CONTRACTS BY MEDICARE BENE-**  
7                   **FICIARIES FOR PROFESSIONAL SERVICES.**

8       (a) IN GENERAL.—Section 1802 of the Social Secu-  
9       rity Act (42 U.S.C. 1395a) is amended by striking sub-  
10      section (b), as added by section 4507(a) of the Balanced  
11      Budget Act of 1997 (Public Law 105–33), and inserting  
12      the following:

13       “(b) CLARIFICATION OF USE OF PRIVATE CON-  
14      TRACTS BY MEDICARE BENEFICIARIES FOR PROFES-  
15      SIONAL SERVICES.—

16           “(1) IN GENERAL.—Nothing in this title shall  
17      prohibit a medicare beneficiary from entering into a  
18      private contract with a physician or health care  
19      practitioner for the provision of medicare covered  
20      professional services (as defined in paragraph  
21      (5)(C)) if—

22           “(A) the services are covered under a pri-  
23      vate contract that is between the beneficiary  
24      and the physician or practitioner and meets the  
25      requirements of paragraph (2);

1 “(B) under the private contract no claim  
2 for payment for services covered under the con-  
3 tract is to be submitted (and no payment made)  
4 under part A or B, under a contract under sec-  
5 tion 1876, or under a Medicare+Choice plan  
6 (other than an MSA plan); and

7 “(C)(i) the Secretary has been provided  
8 with the minimum information necessary to  
9 avoid any payment under part A or B for serv-  
10 ices covered under the contract, or

11 “(ii) in the case of an individual enrolled  
12 under a contract under section 1876 or a  
13 Medicare+Choice plan (other than an MSA  
14 plan) under part C, the eligible organization  
15 under the contract or the Medicare+Choice or-  
16 ganization offering the plan has been provided  
17 the minimum information necessary to avoid  
18 any payment under such contract or plan for  
19 services covered under the contract.

20 “(2) REQUIREMENTS FOR PRIVATE CON-  
21 TRACTS.—The requirements in this paragraph for a  
22 private contract between a medicare beneficiary and  
23 a physician or health care practitioner are as fol-  
24 lows:

1           “(A) GENERAL FORM OF CONTRACT.—The  
2 contract is in writing and is signed by the medi-  
3 care beneficiary.

4           “(B) NO CLAIMS TO BE SUBMITTED FOR  
5 COVERED SERVICES.—The contract provides  
6 that no party to the contract (and no entity on  
7 behalf of any party to the contract) shall sub-  
8 mit any claim for (or request) payment for  
9 services covered under the contract under part  
10 A or B, under a contract under section 1876,  
11 or under a Medicare+Choice plan (other than  
12 an MSA plan).

13           “(C) SCOPE OF SERVICES.—The contract  
14 identifies the medicare covered professional  
15 services and the period (if any) to be covered  
16 under the contract, but does not cover any serv-  
17 ices furnished—

18                   “(i) before the contract is entered  
19 into; or

20                   “(ii) for the treatment of an emer-  
21 gency medical condition (as defined in sec-  
22 tion 1867(e)(1)(A)), unless the contract  
23 was entered into before the onset of the  
24 emergency medical condition.

1           “(D) CLEAR DISCLOSURE OF TERMS.—The  
2 contract clearly indicates that by signing the  
3 contract the medicare beneficiary—

4           “(i) agrees not to submit a claim (or  
5 to request that anyone submit a claim)  
6 under part A or B (or under section 1876  
7 or under a Medicare+Choice plan, other  
8 than an MSA plan) for services covered  
9 under the contract;

10          “(ii) agrees to be responsible, whether  
11 through insurance or otherwise, for pay-  
12 ment for such services and understands  
13 that no reimbursement will be provided  
14 under such part, contract, or plan for such  
15 services;

16          “(iii) acknowledges that no limits  
17 under this title (including limits under  
18 paragraph (1) and (3) of section 1848(g))  
19 will apply to amounts that may be charged  
20 for such services;

21          “(iv) acknowledges that medicare sup-  
22 plemental policies under section 1882 do  
23 not, and other supplemental health plans  
24 and policies may elect not to, make pay-

1           ments for such services because payment is  
2           not made under this title; and

3           “(v) acknowledges that the beneficiary  
4           has the right to have such services pro-  
5           vided by (or under the supervision of)  
6           other physicians or health care practition-  
7           ers for whom payment would be made  
8           under such part, contract, or plan.

9           Such contract shall also clearly indicate whether  
10          the physician or practitioner involved is ex-  
11          cluded from participation under this title.

12          “(3) MODIFICATIONS.—The parties to a private  
13          contract may mutually agree at any time to modify  
14          or terminate the contract on a prospective basis,  
15          consistent with the provisions of paragraphs (1) and  
16          (2).

17          “(4) NO REQUIREMENTS FOR SERVICES FUR-  
18          NISHED TO MSA PLAN ENROLLEES.—The require-  
19          ments of paragraphs (1) and (2) do not apply to any  
20          contract or arrangement for the provision of services  
21          to a medicare beneficiary enrolled in an MSA plan  
22          under part C.

23          “(5) DEFINITIONS.—In this subsection:

1           “(A) HEALTH CARE PRACTITIONER.—The  
 2           term ‘health care practitioner’ means a practi-  
 3           tioner described in section 1842(b)(18)(C).

4           “(B) MEDICARE BENEFICIARY.—The term  
 5           ‘medicare beneficiary’ means an individual who  
 6           is enrolled under part B.

7           “(C) MEDICARE COVERED PROFESSIONAL  
 8           SERVICES.—The term ‘medicare covered profes-  
 9           sional services’ means—

10           “(i) physicians’ services (as defined in  
 11           section 1861(q), and including services de-  
 12           scribed in section 1861(s)(2)(A)), and

13           “(ii) professional services of health  
 14           care practitioners, including services de-  
 15           scribed in section 1842(b)(18)(D),

16           for which payment may be made under part A  
 17           or B, under a contract under section 1876, or  
 18           under a Medicare+Choice plan but for the pro-  
 19           visions of a private contract that meets the re-  
 20           quirements of paragraph (2).

21           “(D) MEDICARE+CHOICE PLAN; MSA  
 22           PLAN.—The terms ‘Medicare+Choice plan’ and  
 23           ‘MSA plan’ have the meanings given such terms  
 24           in section 1859.

1                   “(E) PHYSICIAN.—The term ‘physician’  
 2                   has the meaning given such term in section  
 3                   1861(r).”.

4           (b) CONFORMING AMENDMENTS CLARIFYING EX-  
 5   EMPTION FROM LIMITING CHARGE AND FROM REQUIRE-  
 6   MENT FOR SUBMISSION OF CLAIMS.—Section 1848(g) of  
 7   the Social Security Act (42 U.S.C. 1395w–4(g)) is amend-  
 8   ed—

9                   (1) in paragraph (1)(A), by striking “In” and  
 10                  inserting “Subject to paragraph (8), in”;

11                  (2) in paragraph (3)(A), by striking “Payment”  
 12                  and inserting “Subject to paragraph (8), payment”;

13                  (3) in paragraph (4)(A), by striking “For” and  
 14                  inserting “Subject to paragraph (8), for”; and

15                  (4) by adding at the end the following new  
 16                  paragraph:

17                   “(8) EXEMPTION FROM REQUIREMENTS FOR  
 18                   SERVICES FURNISHED UNDER PRIVATE CON-  
 19                   TRACTS.—

20                   “(A) IN GENERAL.—Pursuant to section  
 21                   1802(b)(1), paragraphs (1), (3), and (4) do not  
 22                   apply with respect to physicians’ services (and  
 23                   services described in section 1861(s)(2)(A)) fur-  
 24                   nished to an individual by (or under the super-  
 25                   vision of) a physician if the conditions described



1 in section 1802(b)(1) are met with respect to  
2 the services.

3 “(B) NO RESTRICTIONS FOR ENROLLEES  
4 IN MSA PLANS.—Such paragraphs do not apply  
5 with respect to services furnished to individuals  
6 enrolled with MSA plans under part C, without  
7 regard to whether the conditions described in  
8 subparagraphs (A) through (C) of section  
9 1802(b)(1) are met.

10 “(C) APPLICATION TO ENROLLEES IN  
11 OTHER PLANS.—Subject to subparagraph (B)  
12 and section 1852(k)(2), the provisions of sub-  
13 paragraph (A) shall apply in the case of an in-  
14 dividual enrolled under a contract under section  
15 1876 or under a Medicare+Choice plan (other  
16 than an MSA plan) under part C, in the same  
17 manner as they apply to individuals not enrolled  
18 under such a contract or plan.”.

19 (c) CONFORMING AMENDMENTS.—

20 (1) Section 1842(b)(18) of the Social Security  
21 Act (42 U.S.C. 1395u(b)(18)) is amended by adding  
22 at the end the following:

23 “(E) The provisions of section 1848(g)(8) shall apply  
24 with respect to exemption from limitations on charges and  
25 from billing requirements for services of health care prac-

1 titioners described in this paragraph in the same manner  
2 as such provisions apply to exemption from the require-  
3 ments referred to in section 1848(g)(8)(A) for physicians’  
4 services.”.

5 (2) Section 1866(a)(1)(O) of such Act (42  
6 U.S.C. 1395cc(a)(1)(O)), as amended by section  
7 4002(e) of the Balanced Budget Act of 1997, is  
8 amended by inserting “(other than under an MSA  
9 plan)” after “Medicare+Choice organization under  
10 part C”.

11 (3) Section 4507(b) of the Balanced Budget  
12 Act of 1997 (Public Law 105–33; 111 Stat. 441) is  
13 amended—

14 (A) in the matter before paragraph (1), by  
15 striking “on the program under this title of pri-  
16 vate contracts entered into under the amend-  
17 ment made by subsection (a)” and inserting  
18 “on title XVIII of the Social Security Act of  
19 private contracts permitted under section  
20 1802(b) of such Act”; and

21 (B) in paragraph (2), by striking “section  
22 1802(b) of such Act (as added by subsection  
23 (a))” and inserting “such section”.

1       (d) EFFECTIVE DATE.—The amendments made by  
2 this section shall be effective as if included in the enact-  
3 ment of section 4507 of the Balanced Budget Act of 1997.

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